

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Timothy D. Hudson and TDS & Associates, Inc.

**DEPARTMENT:** County Attorney's Office

**DIVISION:** Litigation

**AUTHORIZED BY:** Lola Pfeil

**CONTACT:** Jackie Royal

**EXT:** 7256

**MOTION/RECOMMENDATION:**

Acceptance of the proposed mediated settlement wherein the Defendants pay the total of \$47,500.00 to Seminole County Government to settle this breach of contract action for Defendants' default on Affordable Housing Funding Agreements entered into with Seminole County. Judge Simmons.

County-wide

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**BACKGROUND:**

See attached.

**ATTACHMENTS:**

1. Timothy Hudson/TDS & Associates, Inc.

<b>Additionally Reviewed By:</b> No additional reviews
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**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Robert A. McMillan, County Attorney

FROM: Matthew G. Minter, Deputy County Attorney

CONCUR: David Medley, Director/Community Services

DATE: June 28, 2007

Subject: Breach of Contract Action on Affordable Housing Funding Agreements  
Seminole County v. Hudson, et al.  
Case No. 02-CA-0298-15-K

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This memorandum requests that the Board of County Commissioners (BCC) accept \$47,500.00 from Timothy D. Hudson to settle this Breach of Contract action. Mr. Hudson agrees to settle all claims against him and all the defendants in the referenced litigation.

Within (10) days of acceptance of this mediated settlement agreement, Mr. Hudson shall deliver a cashier's check in the amount of \$20,000.00, payable to Seminole County Government. This payment will be delivered to Don Fisher, Deputy County Manager. At the same time, Mr. Hudson will also deliver a promissory note in the amount of \$27,500.00 payable as follows:

- One (1) year after BCC approval, payment of \$10,000.00,
- Two (2) years after BCC approval, payment of \$10,000.00; and.
- Thirty-three (33) months after BCC approval, payment of \$7,500.00.

**I BACKGROUND:**

Seminole County entered into three affordable housing agreements with TDH & Associates (hereafter, TDH). In the first agreement dated April 19, 1996, TDH agreed to construct and rent a minimum of five affordable housing units in Seminole County to low and very low income persons. Seminole County provided TDH \$196,000 to subsidize the construction of those units. This agreement required that these units be rented to qualified individuals for a minimum of fifteen years. TDH constructed the five housing units, but less than six years after construction, sold the units without proper notice to or approval of the County or assurance that the units continued to be rented to

qualified individuals. Notwithstanding the technical failure to comply with the terms of the agreement, it appears that the units continued to be rented to qualified individuals by the subsequent owners. A review of the issues presented by this agreement by Deputy County Manager Don Fisher, Colleen Rotella and the County Attorney determined that, notwithstanding the non-compliance by TDH with the terms of the agreement, the County had certified continued residency by qualified individuals to the State and continued compliance with the agreement by the subsequent owners. In addition, the County bore some responsibility for the technical breaches by failing to assure the proper filing of documents in the public records as determined by auditor findings.

In the second agreement dated October 4, 1996, TDH agreed to purchase property and construct and sell to eligible low-income households a minimum of eight single family houses. Seminole County provided TDH \$65,000 to subsidize TDH's obligations under that agreement. TDH purchased eight parcels of land pursuant to this agreement. TDH only constructed two homes. Then, those homes were sold to an ineligible buyer. Upon demand from the County, TDH conveyed the six remaining parcels to the County. This is the one agreement in which there was failure to perform the substance of the agreement.

In the third agreement dated January 15, 1997, TDH agreed to construct two affordable housing units and rent them to eligible persons for a minimum of fifteen years. Seminole County paid TDH \$80,000 to subsidize its obligations under that agreement. In less than six years, TDH sold the ownership interest in those two units to non-eligible persons without complying with the terms of the agreement but, it appears that the property continued to be occupied by eligible persons.

Mr. Hudson claims that he was given verbal authorization from County staff to sell the above-referenced units. These particular agreements were not closely managed by the County, and the appropriate covenants that would require that the units be used only for affordable housing units were not properly recorded. TDH and Associates did partially perform the agreements and conveyed land purchased under the agreements to the County.

## **II ANALYSIS**

The amount of this settlement reflects the fact that there was partial performance of these agreements; the conveyance of lots back to the County; and our assessment that there may be problems of proof of some elements of value or damages and that the County did not record all of the necessary notices in the public records to notify prospective purchasers of the dedicated affordable housing nature of these properties.

In consideration of the foregoing, it is our judgment that the negotiated settlement represents a return of all amounts the County is out of pocket as it relates to the

referenced agreements and, given the expense and uncertainties attendant to proceeding to trial in the case, a fair settlement under the circumstances.

### **III COST AVOIDANCE**

By this settlement, the County avoids all additional costs associated with litigation.

### **IV RECOMMENDATION:**

County Staff recommends that the BCC accept this mediated settlement at \$47,500.00 payable as set forth above, relating to this breach of contract action.

MGM/dre

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